Kentucky Law Journal

Volume 31 | Issue 1 Article 8

1942

The Effects of Mental Defects Amounting to Less Than Insanity upon Criminal Responsibility

Roy Vance Jr.
University of Kentucky

innocent, injured party should not have to stand the loss of an injury inflicted by the fault of another. Each individual should be liable for the loss caused by his negligence regardless of mental capacity The rule is indeed harsh in that it places on the unfortunate few a duty of using the same degree of care as others who are more capable, however, in lieu of the fact that the primary interest of law is the protection of the rights and safety of the public, the result seems to justify the rule.

ROBERT M. SPRAGENS

THE EFFECTS OF MENTAL DEFECTS AMOUNTING TO LESS THAN INSANITY UPON CRIMINAL RESPONSIBILITY

Often as a defense to a crime the defendant will try to establish that he is feeble-minded or stupid, or that his mentality compares with that of a child. In dealing with these cases of subnormal mentality the courts have shown almost complete unanimity in holding that such defects are not a valid defense.[1]

It is not the purpose of the courts to measure the intellectual capacity of those who come before them.[2] Such a procedure would lead only to confusion and the introduction of abundant testimony as to the degree of a particular defendant's mental derangement. Of course, it must be recognized that there are varying degrees of mental disability which are all less than legal insanity. One adult may possess a mentality equivalent to that of a normal child of ten years of age while another adult may have a mental age of fourteen. Responsibility in intentional crimes, however, is not predicated upon this mental age. The question is not whether one's mind is above or below that of the average man, but rather a question of whether the actor can distinguish between right and wrong, whether he can understand his relationship to others and whether he has knowledge of the nature of his act so as to perceive its consquences.[3]

[1] Dean v. State, 105 Ala. 21, 17 So. 28 (1894), Chriswell v State, 209 Ark. 255, 283 S. W 981 (1926) People v Simon Marquis, 344 Ill. 261, 176 N. E. 314 (1931) Rogers v State, 128 Ga. 67, 57 S. E. 227 (1907), State v. Arnold, 79 Kan. 533, 100 Pac. 64 (1909) Mangrum v Comm., 19 Ky. Law Rep. 94, 39 S. W 703 (1897), Comm. v Stewart, 255 Mass. 9, 151 N. E. 74 (1926) State v. Palmer, 161 Mo. 152, 61 S. W 651 (1901), State v Schilling, 95 N. J. L. 145, 112 Atl. 400 (1920) Patterson v. People, 46 Barb. 625 (N. Y. 1866), Kirby v. State, 49 Tex. Cr. Rep. 517, 93 S. W 1030 (1906)

[2] Conway v. State, 118 Ind. 482, 21 N. E. 285 (1895) Wartena v. State, 105 Ind. 445, 5 N. E. 20 (1886) Comm. v. Stewart, 255 Mass. 9, 151 N. E. 74 (1926).

[3] "Criminal responsibility does not depend upon the mental age of the defendant, nor on the question whether his mind is above or below that of the average normal man, but on the question of whether he knows the difference between right and wrong, can understand his relation to others and that which others bear to him, and has knowledge of the nature of his act so as to perceive its consequences." Comm. v. Stewart, 255 Mass. 9, 151 N. E. 74 (1926) State v Schilling, 95 N. J. L. 145, 112 Atl. 400 (1920), Nelson v State, 43 Tex. Cr. Rep. 553, 67 S. W 320 (1903).

It matters not that the defendant may be erratic, forgetful, or stupid, so long as his mental incapacity does not amount to legal insanity.

It would seem from the foregoing that the courts have adopted two absolute divisions and have held that insofar as criminal responsibility is concerned, a person is either sane or he is insane.[4] There is no "in between" which offers a valid defense to intentional crimes. Thus in the case of *People* v. *Hahn*,[5] the court said,

"All persons are of sound mind who are neither idiots, lunatics, or affected with insanity."

It is submitted however that the varying degrees of mental aberration do have their effect upon the trial of criminal cases. While the states are uniform in holding that subnormal mentality is not a defense to crime, it has been held that the condition of the defendant's mind can be considered in order to find him guilty of a lower grade of offense.[6] This point is by no means settled, however, and there is authority for the position that evidence of subnormal mentality is neither proper as a defense to crime nor as a factor to be considered in mitigating punishment therefor.[7]

One further important question remains. If the mental defects of the defendant are not defenses to intentional crimes, is there any reason for holding that they may be allowed as a defense to negligent crimes? To fully understand this problem, it would be well to look at the law of insanity as a defense to intentional and to negligent crimes.

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[4] A difficult problem is presented in determining what test should be used in order to pronounce a person insane. The majority of states adhere to the so-called "right and wrong" test. State v. Buck, 205 Iowa 1028, 219 N. W 17 (1928); Smith v. State, 95 Miss. 786, 49 So. 945 (1909), Hart v State, 14 Neb. 572, 16 N. W 905 (1883) State v Hassing, 60 Ore. 81, 118 Pac. 195 (1911) About twenty-two states, however, recognize the irresistible impulse doctrine and thus extend the right and wrong test. Thus the test is whether the defendant can distinguish between right and wrong and being so able to distinguish, has he suffered such impairment of the mind as to destroy his will power and render him incapable of choosing that which is right. Parsons v State, 81 Ala. 577, 2 So. 854 (1886) Ryan v. People, 60 Colo. 425, 153 Pac. 756 (1915) Flanagan v State, 103 Ga. 619, 30 S. E. 550 (1898). Those states which do not recognize the irresistible impulse doctrine, refuse to do so upon the ground that it is an impractical rule and nothing short of Omniscience can accurately determine whether or not a person is compelled to act by reason of an irresistible impulse. Cunningham v. State, 56 Miss. 269, 31 Am. Rep. 360 (1879), State v Harrison, 36 W Va. 729, 15 S. E. 982 (1892)

[5] 58 Cal. App. 704, 209 Pac. 268, 270 (1922).

[6] People v Moran, 249 N. Y. 179, 163 N. E. 553 (1928), 1 Wharton, Criminal Law (12th ed. 1932) 90.

[7] "This court has never recognized the doctrine that a person with a mind below normal should be punished for a lower grade of offense if found guilty than a person of normal mind." Hogue v. State, 65 Tex. Cr. Rep. 539, 146 S. W 905, 907 (1912).

Insanity was first allowed as a defense to an intentional crime because it destroyed the possibility that the actor could have possessed a criminal intent.[8] In negligent crimes, however, there is a fundamental difference in that the actor has no actual criminal intent, but only an intent which is implied from his act done in reckless disregard to the life and safety of others. Even in negligence cases, where there is no actual criminal intent, insanity should be a defense, not because it removes criminal intent but because it removes the actor's knowledge of the danger of his act and of the circumstances surrounding it, and because no real benefits to society can be achieved by the conviction of an insane person.[9]

In the case of subnormal mentality an entirely different situation exists. The actor has not lost his ability to distinguish between right and wrong although his knowledge of the circumstances which surround his act may be dulled. So whatever may be the policy of the law in allowing insanity as a defense to a negligent crime, there is no reason for allowing subnormal mentality as a defense to such crimes.

Demaree v. *Comm.*,[10] the only reported case which has been found that raises the problem holds, inferentially, in accordance with what has been said above. In that case the defendant was indicted for shooting and killing a girl. The state contended that the crime was deliberate and intentional. The defense was that the defendant was cleaning the gun while talking to the girl and that the gun was accidentally discharged, killing her. The court in the trial of the case refused to allow evidence that the defendant was weak-minded. It appears that a conviction could have been obtained whether the court accepted the defendant's or the prosecution's version of the facts.[11] Consequently, when the court ruled that the evidence of subnormal mentality was not competent, it in effect ruled that it was incompetent to the negligent as well as to the intentional crime.

The scarcity of cases prevents any comprehensive analysis of the subject, but there appears to the writer no social or legal benefits that would be attained by any other rule. To allow the criminal to

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[8] Crotty, *The History of Insanity as a Defense to Crime in English Criminal Law* (1923) 12 Calif. L. Rev 110.

[9] There is some confusion in the law today with reference to the amount of knowledge an actor must possess to be guilty of a negligent crime. See, Wechsler and Michael, *A Rationale of the Law of Homicide* (1937) 37 Col. L. Rev. 710.

[10] 26 Ky. Law Rep. 507, 82 S. W 231 (1904).

[11] It is quite probable that even if the jury had accepted the defendant's story, they would have been justified in convicting him on the theory of a negligent crime. "A person who causes the death of another by the negligent use of a pistol or gun is guilty of manslaughter, unless the negligence is so wanton as to make the killing murder." State v. Tucker, 86 S. Car. 211, 68 S. E. 523, 524 (1910).

make use of such mental defects as feeble-mindedness, forgetfulness,[12] and what not, would only provide him with numerous avenues of escape from the consquences of his act.

ROY VANCE, JR.

CORAM NOBIS IN KENTUCKY

Defendant, Tom Jones, was convicted of murder in the Bell Circuit Court and on appeal his conviction was affirmed. While awaiting execution the defendant filed a petition for a writ of habeas corpus in the federal district court upon the ground of newly discovered evidence. A temporary stay of execution was granted to allow the defendant to exhaust all remedies he might have in the state courts. The defendant's application for a writ of coram nobis in the circuit court of conviction upon the same grounds used before the federal court for a writ of habeas corpus was denied. Held: Denial affirmed. The writ of coram nobis will not lie on the ground of newly discovered evidence. *Jones* v. *Commonwealth,* 269 Ky. 779, 108 S. W (2d) 816 (1937).

The writ of coram nobis has been recognized as constituting a part of Kentucky law.[1] It will lie in any instance when it would have lain at common law in so far as it has not been supplanted by statutory action.[2] In civil actions the writ has been largely supplanted because additional grounds for a new trial have been specified.[3] However, in criminal cases the code sections specifying additional grounds for a new trial in civil actions have no application.[4] Therefore, the writ is still available in criminal cases.[5]

The function of the writ "is to bring to the attention of the court, for correction, an error of fact—one not appearing on the face of the record, unknown to the court or the party affected and which, if known in season, would have prevented the rendition of the judgment challenged."[6]

There is a paucity of authority in Kentucky concerning the situations falling within the purview of this general purpose. Thus,

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[12] Forgetfulness is another defect which has been mentioned as offering no defense to crime. Comm. v Mangrum, 19 Ky Law Rep. 94, 39 S. W 703 (1897)

[1] Combs et al. v Carter, 1 Dana 178 (1833), Meredith v. Sanders, 2 Bibb 101 (1810)

[2] Jones v. Commonwealth, 269 Ky 779, 108 S. W (2d) 816 (1937)

[3] See Code Section 518, which provided for a new trial because of clerical misprison, fraud of successful party, erroneous proceeding against person under disability, death of party before judgment, casualty or misfortune, errors in judgment against infant and discovery of later will.

[4] Coldiron v Commonwealth, 205 Ky 729 (1924), Greer v. Commonwealth, 165 Ky 715, 178 S. W 1027 (1915), Wellington v. Commonwealth, 159 Ky 462, 167 S. W 427 (1914).

[5] Jones v. Commonwealth, *supra* n. 2.

[6] Asbell v. State, 62 Kan. 209, 61 Pac. 691 (1900).